



California Fair Political Practices Commission

November 2, 1988

Peter D. Bulens
City Attorney
City of Mountain View
444 Castro Street
P. O. Box 7540
Mountain View, CA 94039

Re: Your Request for Advice
Our File No. A-88-380

Dear Mr. Bulens:

This is in response to your request for advice on behalf of Councilmember Dena Bonnell regarding her responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act").^{1/}

QUESTION

Councilmember Bonnell is an employee of Valley Oil Company. May Councilmember Bonnell, sitting as a member of the Board of Directors of the Mountain View Revitalization Authority, participate in a decision to acquire by eminent domain property which is presently occupied by a customer of Valley Oil Company? The decision may terminate the customer's business.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

CONCLUSION

Councilmember Bonnell is required to disqualify herself from participating in the decision to acquire the property in question.

FACTS

The Mountain View Revitalization Authority, a redevelopment agency under Section 33,000, et seq. of the Health and Safety Code, entered into an agreement with a developer regarding a piece of property. The agreement requires the Revitalization Authority to acquire the property for the developer by eminent domain if the developer is unable to acquire it despite good faith efforts.

A gas station operates on a portion of the property at present. The developer has been unable to purchase this portion of the property and has asked the Revitalization Authority to acquire it by eminent domain. Acquisition of the property for the developer will necessarily result in a demolition of the gas station.

The gas station purchases all its gasoline products from Valley Oil Company. The resultant loss of sales would result in Valley Oil losing gross revenues of \$89,376 annually. The loss of profits would be less than \$1,100 per year.

Councilmember Dena Bonnell was elected to the Mountain View City Council and automatically became a member of the Board of the Revitalization Authority. Councilmember Bonnell is an employee of Valley Oil Company. She has received income of more than \$250 from Valley Oil in the past 12 months.^{2/}

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or using his official position to influence any governmental decision in which he has a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or a member of his immediate family or on:

^{2/} You confirmed this in a telephone conversation on November 1, 1988.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(Section 87103(c) and (d).)

Councilmember Bonnell is a public official. (Section 82048.) She is an employee of Valley Oil Company and Valley Oil has been a source of income to her of \$250 or more in the past 12 months. She must therefore disqualify herself if the decision to acquire the property by eminent domain will have a foreseeable and material financial effect on Valley Oil Company. (Section 87103(c) and (d).)

Whether an effect on a business entity in which an official has a financial interest will be considered material depends on the financial size of the business entity. Regulation 18702.2 (copy enclosed) provides guidelines to make such a determination. Based on the letter and a subsequent conversation with you, you have indicated that subdivision (g) of Regulation 18702.2 is the standard applicable to Valley Oil to determine if the financial effect is material. Regulation 18702.2(g) provides:

[T]he effect of a decision will be material if:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating expenses for a fiscal year in the amount of \$2,500 or more; or

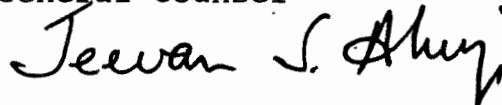
(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.

Since the decision will result in a reduction of gross revenues of Valley Oil by substantially more than the \$10,000 in a fiscal year provided in Regulation 18702.2(g)(1), the effect of the decision is material. Therefore, Councilmember Bonnell must disqualify herself from participating in the decision to acquire the property by eminent domain.

The Commission, by adopting Regulation 18702.2, provided standards which public officials could use in an objective manner.^{3/} Therefore, even though the loss of profits to Valley Oil is only \$1,100 annually, loss of gross revenues of \$89,376 annually (presumably a fiscal year) requires that Councilmember Bonnell must disqualify herself from participating in the decision.

Sincerely,

Diane M. Griffiths
General Counsel



By: Jeevan Ahuja
Counsel, Legal Division

DMG:JA:ld -

Enclosures

^{3/} The Commission has recently adopted new materiality regulations (copy enclosed) which restate and clarify existing Regulation 18702.2. The new regulation will be effective about mid-November 1988. The new regulation will not produce any change in our advice concerning Councilmember Bonnell's situation.



CITY OF MOUNTAIN VIEW

City Attorney
(415) 966-6303

444 Castro Street
P.O. Box 7540
Mountain View, CA 94039

September 29, 1998

Ms. Diane Griffiths
General Counsel
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804-0807

POSSIBLE CONFLICT OF INTEREST OF COUNCILMEMBER AND BOARD MEMBER
DENA BONNELL

Dear Ms. Griffiths:

I am writing this letter to request a written opinion from the Fair Political Practices Commission on a conflict of interest question that has recently arisen. The facts associated with this problem are as follows:

The Mountain View Revitalization Authority, a duly constituted redevelopment agency under California Health and Safety Code Section 33000 et seq., entered into an Owner-Participation Agreement (OPA) with a developer for a proposed project which involved the construction of an office building at Castro and California Streets in Mountain View. Pursuant to the OPA, the Revitalization Authority is obligated to consider the use of eminent domain for the acquisition of property at California and Castro Streets for the proposed project if the developer is unable in good faith to acquire such property.

After the OPA was approved, Dena Bonnell was elected to the City Council and automatically became a member of the Board of Directors of the Mountain View Revitalization Authority (the Board is the City Council). The developer has been unable to purchase a portion of the property in question and has asked that the Revitalization Authority exercise eminent domain to purchase the property for sale to the developer pursuant to the OPA.

The property presently has thereon a gas station that would necessarily be demolished if the Revitalization Authority used its powers of condemnation to purchase the land and transfer it to the developer as required by the OPA. The gas station purchases all its gasoline products from Valley Oil Company, a very


Ms. Diane Griffiths
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small, closely held family corporation which employs, full-time, Councilmember and Revitalization Member Bonnell. Valley Oil Company is not traded and is not qualified to be traded on any exchange nor does it meet the financial standards for listing on any exchange or market. Gross revenue which would be lost to Valley Oil Company resulting from the loss of the sale of gasoline to the gas station in question amounts to \$89,376 annually, including Federal and State road taxes, or \$72,000 annually if these taxes are excluded. The gross profit on these sales that would be lost if acquisition of the property in question by the Revitalization Authority were accomplished amounts to only \$160 per month or \$2,000 in a one-year period. Net profit is less than \$1,100 per year.

I realize that regulations determining the materiality of a decision on a corporation speak in terms of gross revenue lost or gained. However, in this case, we are dealing with a bulk wholesaler where gross revenues can be very high due to quantities sold, but profit on that gross revenue is quite minor. Here, the total profit to be lost on a yearly basis is only \$1,100. Councilmember Bonnell is simply an employee of the company, and a balancing of the interests involved should show that there is no real conflict of interest.

I am asking for your opinion as to whether Councilmember Bonnell must disqualify herself from participating in the determination by the Mountain View Revitalization Authority to acquire by eminent domain the property housing the above-referenced gas station. Your earliest response would be appreciated.

Very truly yours,


Peter D. Bulens
City Attorney

PDB/EGJ
1107-9-28L

cc: Councilmember Dena Bonnell



California Fair Political Practices Commission

October 3, 1988

Peter D. Bulens
City Attorney
P.O. Box 7540
Mountain View, CA 94039

Re: 88-380

Dear Mr. Bulens:

Your letter requesting advice under the Political Reform Act was received on October 3, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jeevan Ahuja, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan
Diane M. Griffiths *for*
General Counsel

DMG:plh
cc: Dena Bonnell



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cc: Councilmember Dena Bonnell